

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

ARK70 DOE,

Plaintiff,

v.

DIOCESE OF BROOKLYN a/k/a
THE ROMAN CATHOLIC
DIOCESE OF BROOKLYN, NEW
YORK; BISHOP KEARNEY HIGH
SCHOOL; ST. THOMAS
AQUINAS; HOLY FAMILY-ST.
THOMAS AQUINAS; and DOES 1-
5 whose identities are unknown to
Plaintiff,

Defendants.

Index No. _____

SUMMONS**TO THE ABOVE NAMED DEFENDANTS:**

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Dated: August 14, 2019
New York, New York

/s/ Jeffrey R. Anderson
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Counsel for Plaintiff

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**COMPLAINT
AND DEMAND
FOR JURY TRIAL**

From approximately the years of 1968 through 1969, Robert F. Militello (“Militello”) sexually abused Plaintiff as a child while Militello was employed by St. Thomas Aquinas. From approximately the years of 1975 through 1977, Monsignor Joseph P. Nagle (“Msgr. Nagle”) sexually abused Plaintiff as a child while Msgr. Nagle was employed by Bishop Kearney High School. While the abuse occurred, Defendants were generally negligent, they negligently employed Militello and Msgr. Nagle, and gave them access to children, including Plaintiff. This lawsuit arises out of Plaintiff’s significant damages from that sexual abuse, described below. Plaintiff, by and through Plaintiff’s attorneys, states and alleges as follows:

PARTIES**A. Plaintiff**

1. At all times material to this Complaint, Plaintiff was either a student at St. Thomas Aquinas or Bishop Kearney High School, both located in Brooklyn, New York. At all times material, Plaintiff resided in the State of New York.

2. Plaintiff brings this action under a pseudonym with leave of Court.

B. Defendants

3. Whenever reference is made to any Defendant entity, such reference includes that entity, its parent companies, subsidiaries, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

4. At all times material, Defendant Diocese of Brooklyn a/k/a The Roman Catholic Diocese of Brooklyn, New York ("Diocese") was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducting business in the State of New York with its principal place of business at 310 Prospect Park West, Brooklyn, NY 11215.

5. The Diocese was created in approximately 1853. Later, the Diocese created a corporation called the Roman Catholic Diocese of Brooklyn, New York to conduct some

of its affairs. The Diocese operates its affairs as both a corporate entity and as the organization known as the Diocese of Brooklyn. Both of these entities and all other affiliated corporations and entities controlled by the Bishop are included in this Complaint as the "Diocese." The Diocese functions as a business by engaging in numerous revenue producing activities and soliciting money from its members in exchange for its services.

6. The Diocese has several programs that seek out the participation of children including, but not limited to, schools and other educational programs. The Diocese, through its officials, has complete control over those activities and programs involving children. The Diocese has the power to appoint, train, supervise, monitor, remove, and terminate each and every person working with children within the Diocese.

7. At all times material, St. Thomas Aquinas was an organization authorized to conduct business and conducting business in the State of New York, with its principal place of business at 249 9th Street, Brooklyn, NY 11215. St. Thomas Aquinas includes, but is not limited to, St. Thomas Aquinas and any other organizations and/or entities operating under the same or similar name with the same or similar principal place of business.

8. At all times material, Holy Family - St. Thomas Aquinas a/k/a Holy Family - St. Thomas Aquinas Parish (Holy Family - St. Thomas Aquinas) was and continues to be an organization authorized to conduct business and conducting business in the State of New York, with its principal place of business at 249 9th Street, Brooklyn, NY 11215. Upon information and belief, St. Thomas Aquinas was absorbed in Holy

Family – St. Thomas Aquinas in a de facto merger or series or de facto mergers. Upon information and belief Holy Family – St. Thomas Aquinas continued the missions and ministry of St. Thomas Aquinas, and remained under the direct authority, control, and province of the Diocese of Brooklyn and the Bishop of the Diocese of Brooklyn after the merger(s). Upon information and belief St. Thomas Aquinas ceased ordinary business operations as soon as possible after the transaction(s), and Holy Family – St. Thomas Aquinas assumed St. Thomas Aquinas’ liabilities ordinarily necessary for the uninterrupted continuation of St. Thomas Aquinas’ operations and business with a continuity of management, personnel, physical location and general business operation. Holy Family – St. Thomas Aquinas includes, but is not limited to, the parish corporation and any other organizations and/or entities operating under the same or similar name with the same or similar principal place of business.

9. Holy Family – St. Thomas Aquinas and St. Thomas Aquinas are collectively referred to herein as “St. Thomas Aquinas.”

10. At all times material, Bishop Kearney High School was and continues to be an organization authorized to conduct business and conducting business in the State of New York, with its principal place of business at 2202 60th Street, Brooklyn, NY 11204. Bishop Kearney High School includes, but is not limited to, Bishop Kearney High School and any other organizations and/or entities operating under the same or similar name with the same or similar principal place of business.

11. St. Thomas Aquinas and Bishop Kearney High School are collectively referred to herein as “Schools.”

12. At all times material, the Schools were and continue to be under the direct authority, control, and province of Defendant Diocese and the Bishop of Defendant Diocese. At all times material, Defendants Schools were under the direct authority, control, and province of Defendant Diocese and the Bishop of Defendant Diocese. At all times material, Defendants Schools and Diocese owned, operated, managed, maintained, and controlled the Schools.

13. Defendants Does 1 through 5 are unknown agents whose identities will be provided when they become known pursuant to C.P.L.R. § 1024.

JURISDICTION

14. This Court has jurisdiction pursuant to C.P.L.R. § 301 as Defendants' principal places of business are in New York and because the unlawful conduct complained of herein occurred in New York.

15. Venue is proper pursuant to C.P.L.R. § 503 in that Kings County is the principal place of business of Defendant Diocese. In addition, many of the events giving rise to this action occurred in Kings County.

FACTUAL ALLEGATIONS

A. Background

16. The hierarchy of the Roman Catholic Church and, by implication these Defendants, have been aware of the serious problem of clergy sexual abuse of children since at least the 1800s.

17. Further, Roman Catholic Church officials, including these Defendants, have used their power and influence to prevent victims and their families from disclosing

allegations of abuse.

18. Additionally, Plaintiff's relationship to Defendants, Militello, and Msgr. Nagle as a vulnerable child and student at Schools was one in which Plaintiff was subject to the ongoing influence of Defendants and Militello and Msgr. Nagle, Plaintiff's abusers.

B. Specific Allegations

19. At all times material, Militello was a teacher employed by the Diocese and St. Thomas Aquinas. Militello remained under the direct supervision, employ, and control of Defendants.

20. At all times material, Msgr. Nagle was a Roman Catholic cleric employed by the Diocese and Bishop Kearney High School. Msgr. Nagle remained under the direct supervision, employ, and control of Defendants.

21. Defendants placed Militello and Msgr. Nagle in positions where they had access to and worked with children as an integral part of their work.

22. Plaintiff was raised in a devout Roman Catholic family and attended Schools in Brooklyn, in the Diocese. Plaintiff and Plaintiff's family came in contact with Militello and Msgr. Nagle as agents and representatives of Defendants, and at St. Thomas Aquinas and Bishop Kearney High School, respectively.

23. Plaintiff, as a youth, participated in activities at Schools. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for the Roman Catholic Church, including Defendants and their agents, including Militello and Msgr. Nagle. During and through these activities, Plaintiff, as a minor and vulnerable child, was dependent on Defendants, Militello, and Msgr. Nagle. Defendants had custody of Plaintiff and accepted

the entrustment of Plaintiff and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

24. From approximately 1968 to 1969, when Plaintiff was approximately 8 years old, Militello engaged in unpermitted sexual contact with Plaintiff.

25. From approximately 1975 to 1977, when Plaintiff was approximately 15 to 16 years old, Msgr. Nagle engaged in unpermitted sexual contact with Plaintiff.

COUNT I: NEGLIGENCE

26. Plaintiff realleges paragraphs 1-25 above.

27. Each Defendant owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

28. Each Defendant owed Plaintiff a duty of care because each Defendant had a special relationship with Plaintiff.

29. Defendants also had a duty arising from the special relationship that existed with Plaintiff, Plaintiff's parents, and other parents of young, innocent, vulnerable children in the Diocese of Brooklyn to properly train and supervise its clerics. This special relationship arose because of the high degree of vulnerability of the children entrusted to their care. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, Defendants had a duty to establish measures of protection not necessary for persons who are older and better able to safeguard themselves.

30. Each Defendant owed Plaintiff a duty to protect Plaintiff from harm because each Defendant also had a special relationship with each Militello and Msgr. Nagle.

31. Defendants owed Plaintiff a duty of reasonable care because they solicited youth and parents for participation in their youth programs; encouraged youth and parents to have the youth participate in their programs; undertook custody of minor children, including Plaintiff; promoted their facilities and programs as being safe for children; held their agents, including Militello and Msgr. Nagle, out as safe to work with children; encouraged parents and children to spend time with their agents; and/or encouraged their agents, including Militello and Msgr. Nagle, to spend time with, interact with, and recruit children.

32. By accepting custody of the minor Plaintiff, Defendants established an *in loco parentis* relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury. Further, Defendants entered into a fiduciary relationship with Plaintiff by undertaking the custody, supervision of, and/or care of the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendants undertaking the care and guidance of the Plaintiff, Defendants also held a position of empowerment over Plaintiff. Further, Defendants, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. Defendants, through its employees, exploited this power over Plaintiff and, thereby, put the minor Plaintiff at risk for sexual abuse.

33. By establishing and/or operating the Diocese and Schools, accepting the minor Plaintiff as a participant in their programs, holding their facilities and programs out to be a safe environment for Plaintiff, accepting custody of the minor Plaintiff *in loco parentis*, and by establishing a fiduciary relationship with Plaintiff, Defendants entered

into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children, who participated in their programs. Defendants owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Defendants had the duty to exercise the same degree of care over minors under their control as a reasonably prudent person would have exercised under similar circumstances.

34. By establishing and operating the Diocese and Schools, which offered educational programs to children and which may have included a school, and by accepting the enrollment and participation of the minor Plaintiff as a participant in those educational programs, Defendants owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

35. Each Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendants invited Plaintiff onto their property and Militello and Msgr. Nagle posed dangerous conditions on Defendants' property.

36. Each Defendant breached its duties to Plaintiff. Defendants failed to use ordinary care in determining whether their facilities were safe and/or determining whether they had sufficient information to represent their facilities as safe. Defendants' breach of their duties include, but are not limited to: failure to protect Plaintiff from a known danger, failure to have sufficient policies and procedures in place to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to ensure that policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children

of the risks of child sex abuse, failure to investigate risks of child molestation, failure to properly train the employees at institutions and programs within Defendants' geographical confines, failure to train the minors within Defendants' geographical confines about the dangers of sexual abuse by clergy and other persons employed by the Catholic Church, failure to have any outside agency test their safety procedures, failure to protect the children in their programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the institutions, programs, leaders and people as safe, failure to train their employees properly to identify signs of child molestation by fellow employees, failure by relying upon mental health professionals, and/or failure by relying on people who claimed that they could treat child molesters.

37. Defendants also breached their duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risks that Militello and Msgr. Nagle posed and the risks of child sexual abuse in Catholic institutions. They also failed to warn them about any of the knowledge that Defendants had about child sexual abuse.

38. Defendants additionally violated a legal duty by failing to report known and/or suspected abuse of children by Militello and Msgr. Nagle and/or its other agents to the police and law enforcement.

39. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that Militello and Msgr. Nagle were not fit to work with children. Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Militello's and Msgr. Nagle's propensity to commit sexual abuse and of

the risk to Plaintiff's safety. At the very least, Defendants knew or should have known that they did not have sufficient information about whether or not their leaders and people working at Schools and other Catholic institutions within the Diocese of Brooklyn were safe.

40. Defendants knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within the Diocese. At the very least, Defendants knew or should have known that they did not have sufficient information about whether or not there was a risk of child sex abuse for children participating in Catholic programs and activities within the Diocese.

41. Defendants knew or should have known that Defendants had numerous agents who had sexually molested children. Defendants knew or should have known that child molesters have a high rate of recidivism. They knew or should have known that there was a specific danger of child sex abuse for children participating in their youth programs.

42. However, despite this knowledge, Defendants negligently deemed that Militello and Msgr. Nagle were fit to work with children; and/or that any previous suitability problems Militello and Msgr. Nagle had were fixed and cured; and/or that Militello and Msgr. Nagle would not sexually molest children; and/or that Militello and Msgr. Nagle would not injure children.

43. Defendants' actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child participating in the programs and activities Defendants offered to minors, Plaintiff was a foreseeable victim. Additionally, as a vulnerable child who

Militello and Msgr. Nagle had access to through Defendants' facilities and programs, Plaintiff was a foreseeable victim.

44. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendants.

COUNT II: NEGLIGENT TRAINING AND SUPERVISION OF EMPLOYEES

45. Plaintiff realleges paragraphs 1-44 above.

46. At all times material, Militello and Msgr. Nagle were employed by Defendants and was under each Defendant's direct supervision, employ, and control when they committed the wrongful acts alleged herein. Militello and Msgr. Nagle engaged in the wrongful conduct while acting in the course and scope of their employment with Defendants and/or accomplished the sexual abuse by virtue of his job-created authority.

47. Defendants had a duty, arising from their employment of Militello and Msgr. Nagle, to ensure that they did not sexually molest children.

48. Further, Defendants owed a duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct between clerics and children.

49. Defendants were negligent in the training, supervision, and instruction of their employees. Defendants failed to timely and properly educate, train, supervise,

and/or monitor their agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed. Defendants were additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Militello and Msgr. Nagle and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Militello and Msgr. Nagle's sexual abuse of Plaintiff. In failing to properly supervise Militello and Msgr. Nagle, and in failing to establish such training procedures for employees and administrators, Defendants failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

50. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendants in the training and/or supervising of its employees.

COUNT III: NEGLIGENT RETENTION OF EMPLOYEES

51. Plaintiff realleges paragraphs 1-50 above.

52. At all times material, Militello and Msgr. Nagle were employed by the Diocese and were under the Diocese's direct supervision, employ, and control when they committed the wrongful acts alleged herein. At all times material, Militello was employed by St. Thomas Aquinas and was under St. Thomas Aquinas's direct supervision, employ, and control when he committed the wrongful acts alleged herein. At all times material, Msgr. Nagle was employed by Bishop Kearney High School and was under the Bishop Kearney High School's direct supervision, employ, and control when he committed the

wrongful acts alleged herein.

53. Defendants negligently retained Militello and Msgr. Nagle with knowledge of Militello's and Msgr. Nagle's propensity for the type of behavior which resulted in Plaintiff's injuries in this action. Defendants failed to investigate Militello's and Msgr. Nagle's past and/or current history of sexual abuse and, through the exercise of reasonable diligence, should have known of Militello's and Msgr. Nagle's propensity for child sexual abuse. Defendants should have made an appropriate investigation of Militello and Msgr. Nagle and failed to do so. An appropriate investigation would have revealed the unsuitability of Militello and Msgr. Nagle for continued employment and it was unreasonable for Defendants to retain Militello and Msgr. Nagle in light of the information they knew or should have known.

54. Defendants negligently retained Militello and Msgr. Nagle in positions where they had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendants taken reasonable care.

55. In failing to timely remove Militello and Msgr. Nagle from working with children or terminate the employment of Militello and Msgr. Nagle, Defendants failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

56. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendants in the retention of its employees.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing causes of action, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate Plaintiff for Plaintiff's injuries and damages and for any other relief the Court deems appropriate. The amount of damages sought in this Complaint exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable. Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.

Dated: August 14, 2019
New York, New York

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